

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ERNESTO CASTILLO-ROJAS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

CASE NO. C07-1922-JLR-JPD
(CR05-392-JLR)

REPORT AND RECOMMENDATION

Petitioner Ernesto Castillo-Rojas has filed a motion under 28 U.S.C. § 2255 seeking to vacate, set aside, or correct the sentence imposed upon him following his 2006 conviction on a charge of possessing methamphetamine with intent to distribute. Petitioner asserts in his motion that the district court erred in its calculation of the sentencing guidelines by assessing a two-point enhancement under Section 2D1.1(b)(1) of the United States Sentencing Guidelines when the government presented no evidence that petitioner possessed any firearms.

Upon review of petitioner's § 2255 motion, this Court determined that the claim presented therein was the same issue that was presented to, and considered by, the Ninth Circuit Court of Appeals on direct review. Claims that have already been raised on direct appeal may not be raised in

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1 a subsequent § 2255 motion absent a showing of manifest injustice or a change in law. *Polizzi v.*
2 *United States*, 550 F.2d 1133, 1135 (9th Cir. 1976) (citing *Kaufman v. United States*, 394 U.S. 217,
3 226-27 & n.8 (1969). Thus, on December 20, 2007, this Court issued an Order directing petitioner
4 to show cause why his § 2255 motion should not be dismissed for failure to state a cognizable
5 ground for relief.

6 On March 24, 2008, petitioner filed a response to this Court's Order to Show Cause.
7 Petitioner concedes in his response that he raised the same issue on direct appeal as he is attempting
8 to raise in this proceedings. He argues, however, that a manifest injustice has occurred and that his
9 challenge to the two-level enhancement for weapons possession should therefore be considered on
10 the merits in these proceedings. Unfortunately, petitioner, in his response to the Order to Show
11 Cause, does little more than reiterate the argument that was fully considered and rejected on direct
12 appeal. Petitioner makes no showing of manifest injustice. Accordingly, petitioner's § 2255 motion
13 should be dismissed as petitioner has not stated any cognizable ground for relief.
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15 DATED this 22nd day of April, 2008.

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18 JAMES P. DONOHUE
19 United States Magistrate Judge
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